

DISCIPLINARY ACTION

DISBARMENT– Michael R. Davis

Supreme Court No. 76, 2012. Effective Date: April 10, 2012

On April 10, 2012, the Supreme Court of Delaware ordered the disbarment of a Delaware attorney, Michael R. Davis, based upon multiple professional misconduct violations involving deceit, dishonesty, and lack of “good moral character.” The Court had previously suspended Mr. Davis on May 27, 2009 for misconduct the Court described as “undeniably knowing,” and “deceptive, if not criminal,” in connection with false notarizations, misrepresentations, and failure to pay taxes and safeguard fiduciary funds. In the disbarment order, the Court affirmed findings made by the Board on Professional Responsibility that Mr. Davis committed twelve ethical violations. These arose out of (1) three separate instances of professional misconduct both before and during his suspension, each involving alcohol, (2) incomplete and misleading statements Mr. Davis made on his Reinstatement Questionnaire filed with the Office of Disciplinary Counsel, and (3) Mr. Davis’ violation of the terms of the Court’s order suspending him. The Court further approved the Board’s recommendation that it disbar Mr. Davis.

Mr. Davis’ first alcohol-related act of misconduct arose out of a single-vehicle accident on September 18, 2008. Mr. Davis, who drank alcohol prior to the accident, went home after the accident to consume more alcohol. When the investigating police officer arrived at Mr. Davis’ home, Mr. Davis answered the door with a glass of wine in his hand, informed the police he “had a few alcoholic drinks when he got home to calm his nerves,” and reported that he had not drunk prior to the accident. Although the investigating officer suspected the accident was alcohol-related, he did not administer a blood alcohol test as he “would not have been able to determine if [Mr. Davis’]

blood alcohol level was high because he drank when he was home or was it high because he was intoxicated while he was driving.” At the Board hearing, two credible witnesses testified Mr. Davis admitted to them he drank alcohol before the accident and continued to drink at home to prevent the police from concluding he had driven while under the influence. The Court found Mr. Davis violated **Rule 8.4(b)** of the Delaware Lawyers’ Rules of Professional Conduct (the “Rules”) by engaging in criminal conduct in violation of 11 *Del. C.* § 1245 when he reported false information to a law enforcement officer---that he had not drunk prior to the accident. The Court further concluded Mr. Davis violated **Rules 8.4(c)** and **8.4(d)** by engaging in conduct involving “dishonesty, deceit and misrepresentation,” and conduct “prejudicial to the administration of justice,” when he drank alcohol after the accident with the “intent to circumvent the police investigation.”

Furthermore, Mr. Davis “knowingly” made “false statement[s] of material fact” in violation of **Rule 8.1(a)** on his Reinstatement Questionnaire when he reported that he walked home after the accident because he did not have his cell phone. The police report reflects Mr. Davis informed the investigating police officers that he was distracted while driving because he was talking on his cell phone. Moreover, Mr. Davis represented he “provided full cooperation” with the investigating police, a falsehood contradicted by the evidence Mr. Davis “improperly frustrated a police investigation by drinking alcohol after the accident and before the police arrived.”

Mr. Davis’ second alcohol-related act of misconduct occurred when he conducted a November 5, 2008 settlement while under the influence of alcohol. At the settlement Mr. Davis’ face was flushed, his speech slurred, and he babbled. Following the settlement Mr. Davis approached a client as if to kiss her, stating something along the lines of “love you.” Mr. Davis’ conduct violated his **Rule 1.3** obligation to act with reasonable diligence as he failed to treat “all

persons involved in the legal process with courtesy and respect.” Mr. Davis’ conduct was also prejudicial to the administration of justice in violation of **Rule 8.4(d)**.

Mr. Davis’ third alcohol-related act of misconduct occurred in July 2009 at Lums Pond. After spending the afternoon with his seven year old son, during which time Mr. Davis consumed alcohol, Mr. Davis’ son did not want to change clothes in the public bathroom. While changing in the parking lot, a couple and a child witnessed Mr. Davis naked from the waist down. Mr. Davis plead guilty to indecent exposure and an alcohol violation. Mr. Davis’ blood alcohol level was 0.16, twice the legal limit. This third alcohol-related incident in less than a year demonstrated a “pattern” that reflected “adversely on [Mr. Davis’] fitness” as an attorney in violation of **Rule 8.4(b)**.

The Court also found Mr. Davis engaged in the unauthorized practice of law in violation of the terms of his suspension by providing legal advice to a former client, discussing legal services and fees with a potential client, and using his former law firm’s email address for at least six weeks after his suspension. This misconduct also constituted a knowing violation of the Court’s order of suspension, and was conduct prejudicial to the administration of justice. This conduct violated **Rules 3.4(c), 5.5(a), 8.4(a), and 8.4(d)**, as well as **Rule 7(c)** of the Delaware Lawyers’ Rules of Disciplinary Procedure.

In concluding disbarment of Mr. Davis was warranted, the Court observed that when it admits an attorney to the Bar

it is a judgment of this Court that the admittee possesses the requisite qualifications, including good moral character. We can no longer make that judgment of [Mr.] Davis. He was suspended for knowingly violating this Court’s ethical rules through deceit and misrepresentation. [Mr.] Davis then defied this Court by violating our Suspension Order and compounded that misconduct when he made misrepresentations to an arm of this Court in his Reinstatement Questionnaire.

Thus, the Court found Mr. Davis “no longer possesses the good moral character” required of a member of a Bar. The Court noted that if Mr. Davis “is not honest with this Court, we have no trust or confidence that he will be honest with other courts, his clients, or third parties.” The Court concluded by stating:

When there can be no reliance upon the word or oath of a party, he is, manifestly, disqualified, and, when such fact satisfactorily appears, the court[s] not only have the power, but it is their duty to strike the party from the rol[l] of attorneys.

Accordingly, the Court ordered Mr. Davis disbarred and his name stricken from the Roll of Attorneys entitled to practice law in the State of Delaware.